

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ASSOCIATION OF AMERICAN
UNIVERSITIES, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF HEALTH & HUMAN
SERVICES, *et al.*,

Defendants.

Case No.

DECLARATION OF MARK BECKER

I, Mark Becker, declare as follows:

1. I am the President of the Association of Public & Land-grant Universities (“APLU”). I have held that position since September 2022. I previously served as a member of APLU’s Board of Directors and as Chair of the Board for the Coalition of Urban Serving Universities. Prior to leading APLU, I spent more than three decades at the different types of universities that comprise APLU’s membership, including as a post-doctoral fellow, professor, dean, provost, and university president. I make this declaration in support of Plaintiffs’ Complaint in this matter and the forthcoming Emergency Motion for a Temporary Restraining Order.

2. As President of APLU, I have personal knowledge of the contents of this declaration, or have knowledge of the matters based on my review of information and records gathered by APLU personnel, and could testify thereto.

3. Founded in 1887, APLU is a membership organization that fosters a community of university leaders collectively working to advance the mission of public research universities. Its

U.S. membership consists of more than 230 public research universities, land-grant institutions, state university systems, and affiliated organizations spanning across all 50 U.S. states, the District of Columbia, and six U.S. territories. Our members include universities ranging from rural to urban institutions, and from emerging research institutions to the most highly intensive centers of academic research. APLU and its members collectively focus on increasing student success and workforce readiness, promoting pathbreaking scientific research, and bolstering economic and community engagement.

4. In particular, APLU supports a community of public research university leaders to address the challenges facing their communities, states, country, and world. APLU advocates for “public impact research,” a broad label used to describe how university research positively impacts society, and it strives to help university leaders emphasize the value of collaborative research with communities. APLU’s member institutions, in turn, are on the front lines seeking cures and treatments for healthcare challenges facing the American people.

5. The federal government has selected APLU member institutions to conduct a wide variety of vital research on behalf of American citizens, funded in part by agency awards from across the federal government, including but not limited to the Department of Health and Human Services (“HHS”) and its National Institutes of Health (“NIH”). For example, in fiscal year 2024, APLU member institutions received more than \$11 billion in research grant funding from NIH.

6. APLU member institutions work on cutting-edge research sponsored by NIH that targets important medical issues, saves and improves lives, and adds immeasurably to the nation’s economy and prosperity. These funded studies have a direct impact on health outcomes nationally—they lead to the development of new treatments, cures, diagnostics, and other health interventions, and they inform health policies that improve the quality of life for millions of people.

NIH-funded researchers at APLU member institutions across the country work tirelessly toward breakthroughs in treating and developing cures for debilitating diseases, including cancer, neurological diseases, infectious diseases, and chronic diseases such as diabetes and heart disease.

7. On a typical NIH grant, the funding amount must cover both “direct costs,” which are expenses directly related to the specific grant activity, and “indirect costs,” which cover essential overhead expenses such as facilities, equipment, utilities, support staff, and financial administration. Indirect costs also include operations that allow research to proceed safely and responsibly, such as proper hazardous waste disposal and compliance with government regulations regarding animal and human subject safety. Indirect cost reimbursements are vital to the operation of the federally funded research system, which includes the NIH-sponsored activities conducted at APLU member institutions. Direct allocable costs on NIH awards fall well short of covering the real, comprehensive cost of sponsored research, as they do not reflect the full facilities and administration costs that APLU member institutions must incur in order to be able to perform the work.

8. On February 7, 2025, NIH issued Notice NOT-OD-25-068, “Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates” (“NIH Supplemental Guidance”). The NIH Supplemental Guidance provides that effective February 10, 2025, indirect costs allowed on all future awards, as well as go-forward expenses for all existing awards, will be limited to fifteen percent.

9. The NIH Supplemental Guidance creates an immediate financial emergency for many APLU member institutions that rely on NIH funding, impacting institutions both small and large. If the NIH Supplemental Guidance is permitted to remain in effect, it will irreparably harm research at APLU member institutions—research that directly benefits public health and American

competitiveness. Such a dramatic reduction in allowable indirect costs on three days' notice—especially for ongoing research activities that APLU member institutions have already budgeted for in their current fiscal year—will immediately impair the universities' ability to conduct sponsored research in compliance with the underlying award agreements and all applicable laws.

10. Specifically, a dramatically reduced indirect cost rate will lead to cuts in the operating budget for personnel who support the research enterprise both directly and indirectly, including research staff, research administration officers, security, technical maintenance, financial staff, and janitorial staff. It will also have harmful impacts on lab maintenance, library operations, IT operations, the purchase and renovation of specialized facilities, and utilities. Moreover, this harm is not limited to monetary damages that can be rectified with a compensatory award later on. Even if the indirect cost rate were increased at a later date, if a research facility must be closed in the interim because its operation and maintenance can no longer be supported, or if key personnel or materials are lost, then the APLU member institution would immediately lose its ongoing investment in that research infrastructure and likely have a diminished ability to restart or undertake that research in the future.

11. Reliance interests are also at stake. For each NIH award, APLU member institutions necessarily rely on both the direct cost and indirect cost allocations in formulating their overall operating budgets for any given year. These allocations are used to plan for annual staffing needs, infrastructure support (e.g., IT networks, regulatory compliance, and grant management support), facility building and renovation, and equipment purchases to support a broad range of overlapping research activities.

12. The devastating impact of the NIH Supplemental Guidance is not limited to APLU member institutions. Many APLU member institutions are the largest employers in their local

regions. If the reduction in the indirect cost rate requires personnel cuts, that loss of employment will not only harm the affected employees and their families, but also the overall economic stability of APLU member institutions' local communities. The APLU member institution may also have to reduce the amount of equipment, labor, and local services used to maintain its facilities, lowering the overall economic activity in the local area.

13. More broadly, the NIH Supplemental Guidance will undermine the continuity and feasibility of sponsored research that results in countless medical and scientific breakthroughs, which provide significant social and economic value to the nation. The United States is a stronger, more secure, and more economically vibrant country as a result of the collective benefits arising from federally sponsored research. In addition, the next generation of scientists, physicians, engineers, and other skilled workers develop their critical expertise while learning and working at research universities such as APLU member institutions. The NIH Supplemental Guidance would drastically reduce the positive impact of this work, as well as the pipeline of educated professionals that U.S. industry relies on to be internationally competitive. Slowdowns or halts in federally funded research by APLU member institutions will allow competitor nations, who are properly maintaining their investments in research, to surpass the United States on this front, threatening American national security and economic dominance.

14. Temporary injunctive relief is needed to protect against these disastrous consequences. Even if the NIH Supplemental Guidance is ultimately rescinded or held to be invalid, APLU member institutions do not have the ability to cover such a dramatic reduction in indirect cost recovery during the course of protracted litigation. Nor can APLU member institutions' endowments be simply redirected to make up for these losses. Endowments are an important institutional asset that provide universities with stability over time, allowing campus

leaders to think long-term about how best to meet the needs of their communities. Endowments are also complex assets with many legal requirements stipulating how they can be used. And not all universities have large endowments, or any endowment at all—in fact, of the public institutions that have endowments, nearly half are valued at less than \$50 million. Even for the public universities with the largest endowments, they are still relatively modest after taking into account the student populations of those institutions. It is important to consider an institution’s endowment size relative to the number of students that institution serves—individual public universities can serve tens of thousands of students, and the largest public university systems serve hundreds of thousands of students.

15. While ranging among states and institutions, public universities receive substantial operational funding from their states for education, though support for scientific research is largely the responsibility of the federal government. Public universities cannot expect states will fill the substantial financial gaps created by NIH’s reductions.

16. As non-profit institutions, APLU member institutions reinvest nearly all of their revenues into mission-critical activities, leaving little margin to absorb unexpected funding gaps. In other words, unlike for-profit organizations, APLU member institutions do not generate significant financial surpluses that could be redirected without impacting core academic priorities such as education programs and financial aid support for students.

17. Absorbing the cost of a lower indirect cost rate, even if it were possible, would also create long-term budget pressures on APLU member institutions—which would in turn force reductions in key investments supporting APLU member institutions’ faculty, students, staff, research, and teaching infrastructure, as well as other critical activities needed to maintain APLU member universities’ academic excellence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 10, 2025, within the District of Columbia.

A handwritten signature in black ink, appearing to read "Mark Becker", with a long horizontal flourish extending to the right.

Mark Becker